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"allotted by the High Court Legal Services Committee"

IN THE HIGH COURT OF JUDICATURE AT JABALPUR:M.P.

Criminal Appeal No. 1732 of 1999.

Appellant: (In Jail) Charau S/o Janak Ram Pargniha, aged about 30 years, R/o Village-Patel Para, Ghatgaon, Thana-Leloonga, Distt. Raigarh,(M.P.).

Vs.

Respondent: State of M.P. through: P.S. Leloonga, Distt. Rajgarh.

CRIMINAL APPEAL UNDER SECTION 374(2) OF CODE OF CRIMINAL PROCEDURE.

With Annexures

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.1732 of 1999

Ghurau

- Versus -

State of M.P. (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
Ag. Chief Justice
18-1-2007

HON'BLE MR. JUSTICE SUNIL KUMAR SINHA

I agree.

Sd/-
Sunil Kumar Sinha
Judge

POST FOR JUDGMENT ON 19TH JANUARY, 2007

Sd/-
Ag. Chief Justice

(23)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1732 of 1999

Ghurau

- Versus -

State of M.P. (now Chhattisgarh)

Present:

Mr. N.K. Chatterjee, Advocate: For the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor: For the State/respondent.

Division Bench:

Hon'ble Mr. L.C. Bhadoo, Ag. C.J. &

Hon'ble Mr. Sunil Kumar Sinha, J.

JUDGMENT

(Delivered on 19th January, 2007)

The following judgment of the Court was delivered by **L.C. Bhadoo, Ag. C.J.**: -

1. This appeal has been directed against the judgment of conviction and order of sentence dated 17th May, 1999 passed by the 2nd Additional Sessions Judge, Raigarh, in Sessions Trial No.96/97, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

2. The prosecution case, in brief, is that Janakram (PW-1), father of the accused/appellant, lodged a report (Ex.P-1) in Police Station: Lailunga on 1-3-1997 at about 7.50 a.m. to the effect that he is resident of Village: Ghatgaon, he has only one son Ghurauram, three years back his son was married to Pushpa Bai, since then she is residing in his house, his son was doubting her fidelity, therefore, he used to watch her movements and in that connection he used to beat her also. 4-5 months back after giving beating to his wife, his son ran away and returned to the house day before yesterday. Yesterday night after taking meal he along with his wife were sleeping in a room, his son Ghurauram and his wife Pushpa Bai were lying in the Verandah along with their two month's child. All of a sudden, at about 11 p.m. he heard a sound of thud in the said Verandah and also

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heard the cries of two month's child, therefore, he along with his wife came out from their room in the Verandah and saw that his son Ghurau was attacking his wife with the iron part of the plow and thereafter, after throwing the iron part of the plow, his son ran towards the street on which he raised cries. He also chased Ghurau saying that Ghurau is running away after assaulting his wife. After hearing his cries, his neighbourer Firu Nagvanshi came there. He saw Ghurau while running away. They came and saw that Pushpa was lying dead in the Verandah and blood was oozing out of her injury.

3. Receiving this report, the Station House Officer, Police Station: Lailunga registered first information report Ex.P-1 for commission of offence under Section 302 of the I.P.C. and left for the scene of occurrence. After giving notice Ex.P-2 to the Panchas, he prepared the inquest Ex.P-3 on the body of Pushpa Bai. Iron part of the plow as well as plain soil, blood stained soil and chappals were taken into possession under Ex.P-4. Clothes and bedding were also taken into possession under Ex.P-5. The body of Pushpa was sent for post-mortem examination to Community Health Centre, Lailunga, where Dr. Shailendra Upadhyay (PW-7) conducted post-mortem on the body of Pushpa Bai. He noticed three lacerated wounds on the head and opined that the death was as a result of coma due to excessive haemorrhage and head injury. The death was homicidal in nature.

4. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Gharghoda, who in turn committed the case to the Sessions Judge, Raigarh, form where learned 2nd Additional Sessions Judge received the case on transfer for trial.

5. The prosecution in order to establish charge against the accused examined 11 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent, he has been falsely implicated in the crime. He further stated that at the time of incident he was under intoxication as he consumed liquor, therefore, he does not know what happened. Learned Additional Sessions Judge after hearing the counsel for respective parties and perusal of the record, convicted and sentenced the accused as aforementioned.

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6. We have heard Mr. N.K. Chatterjee, learned counsel for the appellant and Mr. U.N.S. Deo, Additional Public Prosecutor on behalf of the State/ respondent.

7. Mr. Chatterjee has not disputed the homicidal death of Pushpa Bai. Apart from that, Janakram (PW-1) & Sanmet (PW-5) have stated in their evidence that they witnessed the accused assaulting deceased Pushpa with an iron part of plow. Dr. Shailendra Upadhyay (PW-7), who conducted post-mortem on the body of Pushpa, has stated in his evidence that there were three injuries on the head of the deceased, even temporal bone, parietal bone, beneath the injuries, were found fractured and cause of death was coma as a result of excessive haemorrhage and head injury. The death was homicidal in nature. Therefore, in view of the above ocular and medical evidence, it is established that the death of Pushpa Bai was homicidal in nature.

8. As far as involvement of the accused in the crime in question is concerned, Mr. Chatterjee, learned counsel for the appellant, argued that as there was pitch dark night and Janakram (PW-1) & Sanmet (PW-5), father & mother of the accused, respectively, were sleeping inside the room, therefore, it was not possible for them to identify the assailant. The accused has been convicted without any evidence.

9. On the other hand, Mr. Deo, learned Additional Public Prosecutor, supported the judgment of the trial Court.

10. In order to appreciate the augments advanced by learned counsel for the parties, we have perused the evidence. Janakram (PW-1) has categorically stated in his evidence that on the fateful night he along with his wife were sleeping in their room after taking meal, whereas, the accused and his wife along with their two month's child were sleeping in the Verandah, the accused after snatching the child form his wife thrown him on the ground as a result of which he started crying, thereafter, the accused picked up the iron part of the plow and assaulted Pushpa with that weapon on her head as a result of which the head of Pushpa was burst and after throwing the weapon of offence, the accused ran away. He (PW-1) raised cries on which Firu Nagvanshi came and he saw the accused running away form the house. Thereafter, Panchas of the village were called. Next day, the matter was reported to Police Station: Lailunga under Ex.P-1. He has

further stated that the accused used to doubt the fidelity of his wife therefore, he used to beat her also. Sanmet (PW-5) has also corroborated the above evidence. In cross-examination of these witnesses defence has not been able to elicit any circumstance which discredits the evidence of these witnesses. They are father & mother of the accused and there was no occasion for them to implicate their own son in a false case. Moreover, they have categorically stated in their evidence that the accused and the deceased were sleeping in the Verandah and they themselves saw the accused attacking the deceased with the iron part of plow and running away. There is no reason before the Court to disbelieve the evidence of these two witnesses. Moreover, Firu (PW-2), who came after hearing the cries of Janakram, has stated in his evidence that he saw the accused running away in the street in the moon light and on suggestion of counsel for the accused he has categorically stated that he was knowing the accused, therefore, he identified the accused in the moon light. Further, he stated that when he was coming to the house of Janakram, the accused met him on the way and on enquiry, the accused said that he has committed the murder of his wife. Therefore, the accused made extra judicial confession before this witness also. The accused in his statement under Section 313 of the Cr.P.C. has stated that he was under intoxication, therefore, he does not know what had happened. In view of the above evidence, it is established that the accused was author of the crime in question.

11. Learned counsel for the appellant also argued that as there was a dispute between the father (PW-1) of the accused and the accused, therefore, the father has implicated the accused in a false case.

12. In order to appreciate this argument, we have perused the evidence. It is true that Janakram (PW-1) has stated in his evidence that once Ghurau assaulted him as a result of which he sustained fracture in the palm of his hand and he reported that matter also. This fact has been stated by Firu (PW-2) also. Merely because, the accused attacked his father and the matter was reported, only on this ground it cannot be held that the father of the accused namely, Janakram (PW-1) wanted to implicate the accused in a false case. Even Sanmet (PW-5), mother of the accused, has also stated in her evidence that the accused assaulted his wife Pushpa. Rather this fact shows that the accused was a man of quarrelsome nature, he used to quarrel with his parents, and also he used to beat his wife on suspicion as

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he used to doubt the fidelity of his wife. Therefore, the argument advanced by learned counsel for the appellant Mr. N.K. Chatterjee is devoid of merit and in the circumstances, involvement of the accused in the crime in question is established.

13. The medical evidence of Dr. Shailendra Upadhyay (PW-7) shows that there was a crushed injury on the forehead of the deceased near left eye in the size of 1" x 5" deep up to bone, another injury was on parietal region behind left ear in the size of 4" x 2" deep up to brain, brain material was coming out and the bone was fractured. Third injury was on left eye brow in the size of 4" x 2" deep up to bone and the bone was fractured. The doctor has stated that on account of the above injuries Pushpa died. The manner in which the accused attacked the deceased, skull bone was fractured and Pushpa died instantaneously which shows that the accused attacked the deceased with intention to cause her death. Therefore, for the foregoing reasons we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial Court.

14. In the result, the appeal is devoid of merit, same is liable to be dismissed and it is hereby dismissed.

Sd/-
Ag. Chief Justice

Sd/-
Sunil Kumar Sinha
Judge

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